difference was that courts looked upon dilatory pleas with ill favor, and held a plea in abatement raising an issue of fact to be an admission of the merits of the plaintiff's claim. GOULD'S PL. c. 2, s. 37; 1 CHITTY'S PL. 440. Under Code Procedure, the reason for this rule of judgment of *quod recuperet* has ceased to exist, in cases where defenses both in abatement and in bar are pleaded in the same answer. Under the code, as said in *Thompson* v. *Greenwood,* 28 Ind. 327, 332, "there is no authority for more than one answer, nor for more than one trial upon issues of fact. Every ground of defence must be stated in the same answer." It is technically possible for courts administering the code to adhere to the common law rule in cases where the answer in abatement happens to appear alone, *Thompson* v. *Greenwood,* 28 Ind. 327; *Bond* v. *Wagner,* 28 Ind. 462; but it is more logical to refuse to render a judgment on the merits upon a plea in abatement under any circumstances, and this would seem most nearly in harmony with the liberal spirit of the code.

PUBLIC OFFICERS—PAYMENT TO A DE FACTO OFFICER A DEFENSE TO SUIT FOR SALARY BY DE JURE OFFICER.—Plaintiff had regularly held position of city attorney since July 6, 1914. He contends that before his term of office was properly concluded, K was appointed to this office,—April 17, 1916, and the latter proceeded to perform the duties of the office, and was recognized as such, as well as paid the salary appertaining to this office. The plaintiff's action is for salary from April 17, 1916, to Aug. 1, 1916. *Held*: Payment to *de facto* officer of salary for time actually spent in performance of his duties is a complete defense to a suit for same by the *de jure* officer. *Wilkerson* v. *City of Albuquerque,* (N. Mex., 1919) 185 Pac. 547.

In the first place the court in the case at hand refuses to adjudicate the rightful title to this office in such an action as the present, to which K, the present holder of the office, is not a party. There seems to be adequate authority for this. MECHEM PUBLIC OFFICERS, § 330, *Walden* v. *Town of Headland,* 156 Ala. 562. Such title cannot be determined in an action by the former occupant for his salary. Thus, without deciding the *de jure* title, the court proceeds, apparently assuming K to be a *de facto* holder of the office. The payment of salary to K for the period in question was held to be a complete bar to any action for same by the plaintiff; further, that the plaintiff's remedy, if any, was to secure an adjudication of his title in a proper action, and then sue K for the amount received by him. The principle here laid down seems to be established law, in so far as salary actually paid to the *de facto* officer is concerned. See *Dolan* v. *Mayor,* 68 N. Y. 274; MECHEM, PUBLIC OFFICERS, § 332. This seems to be based on the right of the disbursing officer to rely on the apparent title of the *de facto* officer, (see case last cited), and on this alone. A rather anomalous situation is presented by such cases, for, by the weight of authority as well as reason, it seems that a *de facto* officer, though he has actually performed the services in question and though there be no other claimant, cannot successfully maintain an action for his salary.

For a full discussion of this latter phase of the subject see articles in 10 MICH. L. REV., pp 178 and 291. This right to compensation appears to rest upon the title to the office, as a kind of qualified property right, and not upon a claim for services performed, (see articles last cited, *supra*); and, at least from one point of view, it seems rather illogical that the rightful holder of such title could thus be deprived by payment to another. Perhaps the consideration of public policy involved in the reliance of the disbursing officer upon the apparent title can justify this.

RESTRICTIVE COVENANTS—ASSIGNMENT OF BENEFIT BY OPERATION OF LAW—RIGHT OF EXECUTORS OF COVENANTEE TO SUE.—In an action by the executors of a covenantee, one of whom was also the devisee of the covenantee's remaining estate, for the violation of restrictive covenants by an assignee of the covenantor, *held*, that although there could have been no recovery in either separate capacity the covenants could be enforced by the plaintiffs since they represented both the real and personal estates of the covenantee. *Ives* v. *Brown*, [1919] 2 Ch. 314.

Although the burden of a covenant of this sort is almost universally intended by the original covenanting parties to bind the land of the covenantor into whomsoever hands it comes, the same cannot be said with equal certainty as to the devolution of the benefit of the covenant. Where lots are sold in accordance with a general building plan, subject to restrictive covenants it is ordinarily intended that each of the purchasers should benefit by the agreement, in which case the right to enforce such covenants enures to the land of each purchaser and passes to his assigns. *Mann* v. *Stephens*, 15 Sim. 377; *Cole* v. *Sims*, 5 D. M. & G. 1; *dictum* in *Renals* v. *Cowlishaw* (1878), 9 Ch. D. 125, 11 Ch. D. 866. Otherwise an assignee of a portion of the covenantee's retained estate does not get the benefit of the restrictive covenants by a bare conveyance when there is nothing further to define the property for the benefit of which they were entered into. *Keates* v. *Lyon*, (1869) L. R. 4 Ch. 218; *Renals* v. *Cowlishaw, supra*. The mere additional fact that the "assigns" of the covenantee are included in the original conveyance to the covenantor, is not enough to show an intent to benefit subsequent purchasers from the covenantee. *Everett* v. *Remington*, [1892] 2 Ch. 148. In order to enable the purchaser as an assignee (such purchaser not being an assign of all that the vendor retained when he executed the conveyance containing the covenants, and that conveyance not showing that the benefit of the covenants was intended to enure to each portion of the estate so retained or to the portion of the estate of which the purchaser is the assignee) to claim the benefit of a restrictive covenant, it must at least appear that the benefit of the covenant was part of the subject-matter of the purchase. *Renals* v. *Cowlishaw, supra*. But where the original conveyance states that the covenant was entered into with the intent to benefit the purchasers, heirs and assigns of the remaining tract, the benefit of the covenant becomes annexed to each and every part of the land included and passes by assignment, whether or not its existence was known to the purchaser or formed any part of the consideration. *Rogers*